

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5440 OF 2005

Sanjay Maruti Karle. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri S.V.Kotwal holding for Shri M.S.Mohite for the
Applicant.

Ms.M.M.Deshmukh, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 5th September, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for the State. The offence alleged against the Applicant and co-Accused is under sections 364-A, 386, 342, 506 (2) read 34 of the Indian Penal Code and section 3(25) of the Indian Arms Act.

2. The learned Advocate for the Applicant submitted that there is a gross delay in lodging the F.I.R. He submitted that though the Applicant is in custody for a long time, test identification parade is not held and the Applicant has not been identified. The learned A.P.P. submitted that the F.I.R. itself contains an explanation why there is a delay in recording the same. The learned A.P.P. invited my attention to the statement of the Applicant in which there is a

confession on the part of the Applicant. The learned A.P.P. stated that no case is made out for enlarging the Applicant on bail.

3. A perusal of the F.I.R. shows that the first informant has stated that he did not file complaint about commission of serious offence as his brother was scheduled to get married on 21st January 2005. Therefore, out of fear the first informant and his father did not lodge the complaint. The F.I.R. has been registered on 23rd February 2005. Thus, even after the marriage there is a gross delay in filing F.I.R. The F.I.R. records that the first informant was informed by the Police that two co-accused namely Nitin Pansare and Raju Chavan have been arrested by the Police and only thereafter the F.I.R. was filed. The Applicant has been arrested on 13th April 2005. As the first informant did not personally know the Applicant, his name did not appear in the F.I.R. The learned A.P.P. did not dispute the fact that the test identification is not held and the Applicant is not identified. The alleged confessional statement of the Applicant has been recorded before a Police Officer and hence cannot be considered.

4. The charge sheet is already filed. Though the Applicant is in custody for last more than four months, he has not been identified in the test identification

parade. Though the Applicant has allegedly identified the place of offence, there is no recovery made at the instance of the Applicant. Apart from the delay in recording the F.I.R., these are the aspects which are required to be considered for grant of bail. Accordingly a case is made out for enlarging the Applicant on bail subject to the stringent conditions.

5. In view of the above, the following order is passed:

- (i) The Applicant shall be enlarged on bail in connection with C.R.No.78 of 2005 registered at Nigadi Police Station, Pune, subject to furnishing a personal bond of Rs.25,000/- with one or two sureties in the like amount.
- (ii) Bail is granted subject to condition that till completion of trial, the Applicant shall not enter the area falling within the jurisdiction of Nigadi Police Station, Pune. This order will be implemented only after the Applicant furnishes to the Investigating Officer his detailed address of place of residence and telephone number, if any, where he proposes to stay after he is enlarged on bail.

- (iii) Bail is granted subject to further condition that till the conclusion of trial the Applicant will mark his attendance once a week in the concerned local Police Station in whose jurisdiction the Applicant will be residing.
- (iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.
- (v) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.
- (vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.
- (vi) Application is disposed of in above terms.

Judge.